

**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No. IT-04-75-T
Date: 26 August 2014
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 26 August 2014

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR ADMISSION OF EVIDENCE OF
DGH-036 PURSUANT TO RULE 92 *TER***

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

1. **THIS TRIAL CHAMBER** of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the “Defence Motion for Admission of Evidence of Pajo Nedić (DGH-036) Pursuant to Rule 92 *ter*” (“Motion”), filed with an annex on 14 July 2014. The “Consolidated Prosecution Response to Motions for Admission of Evidence of DGH-034, DGH-035 and DGH-036 Pursuant to Rule 92 *ter*” was filed on 29 July 2014 (“Response”). On 5 August 2014, the Defence filed a “Request for Leave to Reply and Reply to Consolidated Prosecution Response to Motions for Admission of Evidence of DGH-034, DGH-035 and DGH-036 Pursuant to Rule 92 *ter*” (“Reply”).

A. Submissions

2. In the Motion, the Defence requests the admission of the prior testimony of DGH-036 in the *Dokmanović* case (Rule 65 *ter* number 1D02331) pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence (“Rules”), subject to the witness’s in court affirmation. The Defence also tenders the witness’s prior statement (Rule 65 *ter* number 1D02330) as admitted in the *Dokmanović* case, as an associated exhibit.¹ The Defence submits that DGH-036’s prior testimony is both relevant and probative, referring to his role as the Minister of Economic Relations, Economic Development and Industry in the Government of the Serbian Autonomous District of Slavonia, Baranja and Western Srem (“SAO SBWS”).² The Defence submits that the testimony contains information directly relevant to: (a) the witness’s appointment as Minister; (b) the Government’s lack of material resources and authority; (c) the nature of Government meetings and the recording of minutes; (d) the focus of the meeting on 19 November 1991, including the Government’s attempts to assert increased control over civilian affairs; (e) the extent of control held by the Yugoslav People’s Army (“JNA”) and the Government over civilian affairs; (f) the establishment of a civilian administration in Vukovar; (g) the lack of Government control of the Territorial Defence (“TO”) within SAO SBWS; and (h) the purpose of the meeting of 20 November 1991.³ In the revised Rule 65 *ter* witness summary, the Defence states that DGH-036 “will also testify that to his knowledge the district government provided no funding to Arkan, whether through the avenue of the DP Dalj enterprise, or by any other channel.”⁴ Lastly, the Defence submits that DGH-036’s evidence could not be completed in the one hour allocated to it, without the admission of his previous testimony.⁵

¹ Motion, para. 1.

² Motion, paras 5 and 6.

³ Motion, para. 5.

⁴ Motion, annex.

⁵ Motion, para. 7.

3. In the Response, the Prosecution does not object to the evidence being admitted provided that the relevant conditions under Rule 92 *ter* of the Rules are complied with. The Prosecution requests disclosure of the evidence relied upon in the revised Rule 65 *ter* witness summary, whether a proofing note for an interview or a supplementary statement, in accordance with the guidelines of the Chamber.⁶

4. In the Reply, the Defence submits that in respect of the revised Rule 65 *ter* witness summary, there is no additional statement or proofing note with respect to DGH-036, and as a result there is nothing further to be disclosed.⁷

B. Applicable Law

5. Rule 92 *ter* of the Rules provides:

(A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:

(i) the witness is present in court;

(ii) the witness is available for cross-examination and any questioning by the Judges; and

(iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

(B) Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.

6. The main objective of Rule 92 *ter* of the Rules is to ensure an effective and expeditious trial in accordance with the rights of the accused.⁸ The jurisprudence of the Tribunal has also applied the Rule as permitting, by necessary inference, the admission of exhibits where they accompany written statements or transcripts and form an "inseparable and indispensable" part of the written evidence.⁹ In order to satisfy this requirement, the document must be one without which the witness's testimony would become incomprehensible or of lesser probative value.¹⁰ Moreover, the evidence

⁶ Response, para. 4.

⁷ Reply, paras 1, 4.

⁸ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on the Application of Rule 92 *ter* of the Rules, 3 July 2007, p. 2; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Motion to Convert *Viva Voce* Witnesses to Rule 92 *ter* Witnesses, 31 May 2007, p. 2.

⁹ *Prosecutor v. Đorđević*, Case No. IT-05-87/1-T, Decision on Vlastimir Đorđević's Motions for Admission of Evidence Pursuant to ICTY Rule 92*ter*, 22 January 2010 ("*Đorđević* Decision"), para. 7; *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Confidential Prosecution Motion for the Admission of Prior Testimony with Associated Exhibits and Written Statements of Witnesses Pursuant to Rule 92 *ter*, 9 July 2008 ("*Lukić and Lukić* Decision"), para. 15; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Prosecution's Motion for the Admission of Written Evidence of Witness Slobodan Lazarević Pursuant to Rule 92 *ter* with Confidential Annex, 16 May 2008 ("*Stanišić and Simatović* Decision"), para. 19.

¹⁰ *Đorđević* Decision, para. 7; *Lukić and Lukić* Decision, para. 15; *Stanišić and Simatović* Decision, para. 19.

sought to be admitted, whether a written statement or a transcript of oral testimony, must fulfil the general requirements of admissibility of Rule 89(C) of the Rules—the proposed evidence must be relevant and have probative value.¹¹

C. Discussion

7. DGH-036's proposed evidence contains information about, *inter alia*, (a) the resources and extent of authority that the SAO SBWS Government possessed;¹² (b) the nature and purpose of Government meetings, and in particular those in November 1991;¹³ (c) the meaning of the minutes taken at the Government meeting of 19 November 1991, including the question of who was in control of Vukovar after it was taken over and the establishment of a civilian administration in Vukovar;¹⁴ and (d) the ability of the Government to control the JNA and TO within the SAO SBWS.¹⁵ The Chamber notes that the Prosecution does not oppose admission of this evidence pursuant to Rule 92 *ter* of the Rules. The Chamber considers that the proposed evidence is appropriate to be admitted in written form and notes that the Prosecution will have the opportunity to test the witness in relation to the proposed evidence during cross-examination. The Chamber considers that the tendered associated exhibit, namely a witness statement from the *Dokmanović* case, Rule 65 *ter* number 1D02330, is referred to during DGH-036's testimony and forms an inseparable and indispensable part of the evidence.¹⁶ The Chamber finds that the tendered evidence is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter* of the Rules.

8. Additionally, the Chamber notes the Prosecution request that any supplementary statement or proofing note taken from DGH-036 in order to compose the revised Rule 65 *ter* witness summary should be disclosed.¹⁷ The Defence has since clarified in the Reply that there is nothing further to disclose.¹⁸ Consequently, the Chamber will presently give no direction in this regard and encourages the parties' informal communication on such matters in the future.

¹¹ *Dordević* Decision, para. 5; *Lukić and Lukić* Decision, paras 15-16.

¹² Rule 65 *ter* number 1D02331, *Prosecutor v. Dokmanović*, Case No. IT-95-13a, 26 May 1998, T. 3139-3141, 3145.

¹³ Rule 65 *ter* number 1D02331, *Prosecutor v. Dokmanović*, Case No. IT-95-13a, 26 May 1998, T. 3143-3148, 3152-3153.

¹⁴ Rule 65 *ter* number 1D02331, *Prosecutor v. Dokmanović*, Case No. IT-95-13a, 26 May 1998, T. 3143-3147.

¹⁵ Rule 65 *ter* number 1D02331, *Prosecutor v. Dokmanović*, Case No. IT-95-13a, 26 May 1998, T. 3151-3152.

¹⁶ Rule 65 *ter* number 1D02331, *Prosecutor v. Dokmanović*, Case No. IT-95-13a, 26 May 1998, T. 3135-3136.

¹⁷ Response, para. 4.

¹⁸ Reply, para. 4.

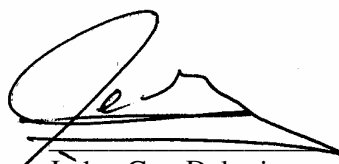
D. Disposition

9. Accordingly, the Trial Chamber, pursuant to Rules 54, 89(C), 92 *ter*, and 126 *bis* of the Rules, hereby:

- (a) **GRANTS** the Defence leave to file the Reply in respect of DGH-036;
- (b) **DECIDES** that the evidence of DGH-036 is appropriate for admission into evidence; and
- (c) **INFORMS** the parties that the Chamber will make a final decision on whether to admit the evidence of DGH-036, if the conditions set forth in Rule 92 *ter* of the Rules have been fulfilled, when the witness gives evidence in these proceedings.

Done in English and French, the English text being authoritative.

Done this twenty-sixth day of August 2014,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]